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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0173]

[Docket 2012-0076; Sequence 52]

**Submission for OMB Review; Limitations on Pass-Through
Charges**

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding Limitations on Pass-Through Charges. A notice was published in the Federal Register at 77 FR 69440, on November 19, 2012. One comment was received.

DATES: Submit comments on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit comments identified by **Information Collection 9000-0173, Limitations on Pass-Through Charges** by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0173, Limitations on Pass-Through Charges". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0173, Limitations on Pass-Through Charges" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd floor, Washington, DC 20405. ATTN: Hada Flowers/IC 9000-0173, Limitations on Pass-Through Charges.

Instructions: Please submit comments only and cite Information Collection 9000-0173, Limitations on Pass-Through Charges, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to

<http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, Office of Acquisition Policy, at telephone (202) 501-3221 or via e-mail to Edward.chambers@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

To enable contracting officers to verify that pass-through charges are not excessive, the clause at FAR 52.215-22, Limitations on Pass-Through Charges—Identification of Subcontract Effort, requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with its proposal:

(1) The percent of effort the offeror intends to perform and the percent expected to be performed by each subcontractor.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed—

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and,

(ii) A description of the value added by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and,

(ii) A description of the value added by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

In addition, if the amount of the effort to be subcontracted by the contractor or a subcontractor changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed, the clause at FAR 52.215-23, Limitations on Pass-Through Charges, requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort.

B. Discussion and Analysis

One respondent submitted public comments on the extension of the previously approved information

collection. The analysis of their public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR clause 52.215-22. This clause requires offerors submitting a proposal for a contract, task order, or delivery order to provide certain information on its projected subcontracting activities with its proposal. Absent the reporting under this clause, the Government would be vulnerable to charges from prime contractors related to subcontract activity which did not provide commensurate or even any value to the contract.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that

the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent stated the estimate of a half hour per response per respondent is understated, and that a more realistic estimate would be in the range of 40 to 80 hours per response. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006. The respondent also provided that the burden of compliance with the information collection requirement outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the

paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and although, the respondent provided estimates of responses and burden hours, the estimates cannot be confirmed with any degree of certainty to totally rely on the information. However, it is determined that an upward adjustment from the previously approved information collection is warranted at this time based upon consideration of the information provided in the public comment.

C. Annual Reporting Burden

There is no centralized database in the Federal Government that maintains information regarding the use of the clauses at FAR 52.215-22 and FAR 52.215-23. Therefore, subject matter experts were consulted to obtain additional information that helped in estimating the revised public burden.

For this information collection requirement data from Fiscal Year (FY) 2012 was retrieved from the Federal Procurement Data System - Next Generation (FPDS-NG). The parameters for this information collection were defined based on the prescription from the applicable clauses. Based on a comprehensive review of the prescriptions for the applicable clauses, it was determined that the types of contracts associated with this information collection are:

(1) For civilian agencies, cost-reimbursement type contracts and the total estimated contract or order value exceeds the simplified acquisition threshold (SAT).

(2) For DoD, the total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in 15.403-4 (\$700,000); and the contract type is expected to be any contract type except—

(i) A firm-fixed-price contract awarded on the basis of adequate price competition;

(ii) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(iii) A firm-fixed-price contract for the acquisition of a commercial item;

(iv) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item;

(v) A fixed-price incentive contract awarded on the basis of adequate price competition; or

(vi) A fixed-price incentive contract for the acquisition of a commercial item.

For civilian agencies, FPDS-NG shows 3,017 contracts awarded to 2,258 unique vendors were applicable to the clauses associated with this information collection. For DOD, FPDS-NG shows 1,376 contracts awarded to 1,119 unique vendors were applicable to the clauses associated with this information collection. This equates to a total of 4,393 contracts awarded to 3,377 unique vendors. Based on discussions with subject matter experts, it was determined

that 4,393 contract awards was a sufficient baseline for estimating the number of solicitations that would include the applicable clause. It is estimated that 3 responses would be submitted in response to a solicitation that included the applicable clauses, for a total of 13,179 estimated respondents per year. The number of responses per respondent is estimated at one. It is also determined that the estimated time required to read and prepare a response is increased from 60 minutes to 120 minutes. This determination is based on the consideration of public comments.

These revisions represent an increase from the previously approved information collection.

Respondents: 13,179.

Responses Per Respondent: 1.

Total Responses 13,179.

Hours Per Response: 2.

Total Burden Hours: 26,358.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW, 2nd floor, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No.

9000-0173, Limitations on Pass-Through Charges, in all
correspondence.

Dated: July 24, 2013

Karlos Morgan,
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